Rec #103770

19

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

---X

JIM KOLESZAR and
NEEDA PARTS MANUFACTURING, INC.,

Plaintiffs,

v.

DORMAN PRODUCTS, INC.

Defendant.

---X

Case:5:17-cv-11523
Judge: Levy, Judith E.
MJ: Davis, Stephanie Dawkins
Filed: 05-12-2017 At 11:45 AM
CMP JIM KOLESZAR, ET AL V DORMAN PRODUCTS, INC (LG)

I. NATURE OF THIS ACTION

1. This is an action by plaintiff, Needa Parts Manufacturing, Inc., a formerly successful company in the automobile replacement parts market, against defendant, Dorman Products, Inc., who by its own admission was and is the "dominant aftermarket supplier of original equipment 'dealer exclusive' items." This action seeks damages (including punitive damages) against Dorman, based upon violations of Sections 1 and 2 of the Sherman Act, which were calculated by Dorman to eliminate Needa's continued participation in the market. As a result of Dorman's anticompetitive, unfair and fraudulent conduct, Needa's business was destroyed and no longer operates. In addition, Needa's founder, plaintiff Jim Koleszar, seeks damages for fraud against Dorman under applicable state law.

II. PARTIES

2. Jim Koleszar ("Koleszar") is an individual residing in Howell, Michigan.

3. Needa Parts Manufacturing, Inc. ("Needa") is a corporation organized and existing under the laws of the State of Michigan with an office located at 4095 Pinehurst Drive, Howell, Michigan, 48843, but it currently does no business.

4. Koleszar, a former Vice President of Sales at Dorman, founded Needa in 1999, following the expiration of an 18-month non-compete provision, which was contained in his severance agreement Dorman. Needa was established to compete with Dorman.

5. Dorman is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business located at 3400 East Walnut Street, Colmar, Pennsylvania 18915.

6. Established in 1978, Dorman is a leading supplier of replacement parts and fasteners for passenger cars, light trucks, and heavy duty trucks in the automotive aftermarket. Most of Dorman's sales are purchased by do-it-yourself ("DIY") customers for passenger cars and light trucks. It sells these parts "through automotive aftermarket retailers (e.g., Advance Auto Parts, AutoZone, and O'Reilly Auto Parts), national, regional and local warehouse distributors (such as Genuine Parts Co. and NAPA Auto Parts), specialty markets, and salvage yards. It also sells parts to "jobbers" who resell them to professional installers (automotive repair shops).

7. Dorman boasts in its annual report and elsewhere that it is "the dominant aftermarket supplier or original equipment 'dealer exclusive' items."

III. JURISDICTION AND VENUE

8. This Court has jurisdiction over Needa's claims under the Sherman Act and is proper under 28 U.S.C. § 1331 and 1337(a), as well as under 15 U.S.C. § 15 with respect to the Sherman Act.

9. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332 in that this action is between citizens of different states and the amount in controversy exceeds $75,000 exclusive of interest and costs.

10 Venue is proper in this District pursuant to any one or more of 28 U.S.C. §1391, 15 U.S.C. §15 and 15 U.S.C. §22, because Dorman transacts business and is found within this District and a substantial part of the events giving rise to the claims herein occurred or were intended to cause effects in this District.

IV. THE RELEVANT MARKET

11. The relevant product market (the "FDO Market") for purposes of this action is the national product market for the sale of what Dorman refers to as "formerly-dealer-only," "dealer exclusive," "original equipment dealer exclusive" or "new to the aftermarket" parts and the associated inventory and related services provided by suppliers in this market: a particular market segment Dorman asserts it created and is generally referred to in the parts market at the "FDO" market (i.e., formerly-dealer only market). Dorman describes this segment in its SEC filings and investor presentations as: "[T]hose [replacement parts] which [sic] were traditionally available to consumers only from original equipment manufacturers . . . ."

12. The FDO Market is thus composed largely of repair, as opposed to maintenance parts (such as hoses, gaskets, etc.). Many of them are exterior and interior repair products, such as door lock and latch components, hood and latch parts, tailgate handles and components,

exterior lamp parts, window components, side and rear view mirrors, etc., and fasteners of various kinds. The rest are primarily light repair under-hood and under-car products, such as cooling and heating components, HVAC parts, air cleaner components, exhaust components, etc. The FDO Market also includes related services (e.g., identification of auto parts that stores should carry, inventory advice, etc.) The foregoing is collectively referred to hereinafter as the "FDO Parts."

13. The FDO Market for the supply of FDO Parts in the United States is substantial. The geographic market is both local and nationwide.

14. As mentioned above, Dorman has publically stated on repeated occassions that it believes that it is "the dominant aftermarket supplier of original equipment 'dealer exclusive' items," i.e., the supplier of FDO Parts in the FDO Market. Upon information and belief, approximately 94% of Dorman's sales are made to parts retailers and to the major parts distributors such as NAPA Auto Parts ("NAPA"), an American retailers' cooperative that distributes automotive placement parts, accessories, and service items in North America with over 6000 stores across the United States. The four major retailers and NAPA were responsible for 60% of Dorman's 2014 net sales of $752 million. Dorman purchases the vast majority of its parts from third-party suppliers.

15. Dorman markets these parts through its "Help!" line of products. Each of the four major retail auto parts suppliers carries Dorman Help! parts in each of its stores, which are prominently displayed on centrally located racks. Many, if not the vast majority, of independent stores, supplied by automotive parts distributors such as NAPA, also carry Dorman Help! parts.

16. Upon information and belief, Dorman's share of the FDO Market is ninety-five percent (95%).

17. There are high barriers to entry into the FDO Market and include specialized knowledge of the particular FDO Parts for which there is significant demand (and in what amounts); knowledge regarding how to manufacture parts that will fit across car brands, models, and years; and relationships with national retailers (who sell the vast majority of FDO Parts). Indeed, the substantial barriers to entry are proven, most significantly, by the fact that successful entry has proven to be extremely difficult even for auto parts suppliers much larger than Dorman.

18. By virtue of its dominance in the FDO Market, Dorman has substantial control and influence over those retailers and distributors who purchase FDO Parts from it. The denial of access to Dorman FDO Parts (and other auto parts), would cause a significant economic loss and/or disruption in business to those customers, and the threat of such withdrawal provided (and provides) Dorman with power to significantly control their actions, including the power to force retailers and distributors to exclude competitors' products, like those that Needa offered and sold, and the power to raise prices that Dorman charged (or could have charged) its customers substantially above competitive levels.

19. Through the intentional acts discussed more fully below, Dorman established and improperly achieved (and maintains) monopoly power in the FDO Market, which resulted in the unfair demise of Needa.

V. DORMAN'S UNLAWFUL CONDUCT

A. Relevant Background Facts and Dorman's Exclusionary Practices

20. Doorman was not willing simply to compete with Needa on the relative merits of its and Dorman's competitive products. Instead, shortly after Needa entered the market, Doorman began, and continues today, a pattern of anticompetitive, unfair and deceptive practices designed to thwart competition from any competitor on the merits, to prevent and/or dis-

incentivize retailers and distributors from carrying Needa's FDO Parts, to deprive end user customers of a choice between Needa and Dorman parts, and to exclude Needa from the FDO Market and to destroy its business.

21. Plaintiff Koleszar worked at Dorman from 1982 to 1998, beginning as a salesman and eventually working his way up to Vice-President of Sales. He held the senior sales position from 1992 until 1998. After the expiration of an 18-month non-compete, Koleszar established Needa and went into business in competition with Dorman in the FDO Market. He did so in part at the urging of two former customers, who reasoned that Dorman had no competition at the time in the FDO Market.

22. In March 2001, shortly after Needa opened its doors, Dorman (under its previous name R&B) sued Needa and Koleszar in the federal court in the Eastern District of Pennsylvania alleging copyright infringement of its catalogs and part numbers, trademark infringement of registered and unregistered marks (also claiming that Needa improperly packaged and resold Dorman parts), breach of contract, breach of fiduciary duty, and tortious interference with contractual relations. In mid-2005, and following the close of discovery, the court granted Needa's motion of summary judgment on all claims except a trademark claim. The remaining claim was settled for no money and no commitment by Needa to discontinue the use of the relevant marks. Dorman's CEO told Koleszar at or near the conclusion of Dorman's case against him that he was not going to let Needa "get into any" retailer in the country.

23. By the end of 2008, however, Needa had grown to $2.5 million in revenue on sales of 3,400 different parts to more than 8,000 stores and distributors nationwide, including various national chains (O'Reilly, CSK, Federated, Advanced Auto, and Pep Boys). In June 2008, CSK Auto, Inc. (a national retail auto parts supplier) and Needa entered a written contract

whereby Needa became the primary supplier for nuts and bolts and FDO items to CSK for three years. In July 2008, O'Reilly acquired the stock of CSK, becoming the third-largest national retail auto parts dealer in the country, with 2,000 stores nationwide. O'Reilly thereafter promptly requested that Needa become the fastener supplier for its stores nationally for five years and also awarded categories in the FDO business. Needa's contract with O'Reilly was the "break" or "game changer" that Koleszar had been waiting for. Not only would the sales to O'Reilly provide him with the revenues and profits he needed to continue to build the business, but it would give him more credibility with other customers. Needa signed a contract under which O'Reilly would purchase a minimum average of $165,000.00 a month with growth expected of ten percent (10%) to fifteen percent (15%) annually. Bolstered by the O'Reilly contract, Needa's sales grew to $3.7 million in 2009, and were comparable in 2010. Needa's goal was to get to $10 million in sales by 2013.

24. In June 2011, O'Reilly informed Needa that it would be terminating the contract effective September 2011, allegedly for performance reasons. The loss of the O'Reilly business was crushing to Needa. With its cash flow slashed, Needa was unable to service its debt and, in late 2011, Needa's bank called its loan. In early 2012, the bank sold Needa's assets to H. Paulin & Co., a Canadian parts distributor/manufacturer for a small percentage of the value.

25. In 2012, Needa sued O'Reilly in federal court in Arizona for breach of contract and fraud. In mid-2013, during discovery, Needa learned for the first time that Dorman had induced O'Reilly to breach its contract with Needa. In an effort to drive Needa from the market, Dorman had agreed to purchase O'Reilly's entire Needa inventory at retail prices and provide other incentives if O'Reilly would terminate its contract with Needa for the sole purpose of forcing Needa out of the market. The evidence for this is virtually conclusive. Both an April 13,

2011 internal email among O'Reilly senior management and an internal O'Reilly PowerPoint presented to its "Product Review Board" analyzing the pros and cons of terminating Needa's contract stated that ***"Dorman says they are not making money on this and their motivation is to take out competitor*** - What happens to our cost when Needa is gone?" Similarly, during a deposition, an O'Reilly witness confirmed that this is what he was told by a Dorman representative.[1]

26. Koleszar has also been advised by other retailers and suppliers of several other instances of Dorman's predatory conduct, which was intended to choke off Needa's access to both parts and customers. Upon information and belief:

- Other retailers were admonished by Dorman not to buy from Needa because they would lose Dorman discounts or would be cut off completely from Dorman products.
- Other suppliers were told by Dorman not sell to Needa under threats that Dorman would stop buying from them.
- Other suppliers were told by Dorman to significantly raise Needa's prices for parts or face losing Dorman as a customer.
- In addition to its deal with O'Reilly, Dorman knocked Needa out of its position in other stores by agreeing to buy out the entire Needa inventory at retail.

27. Through such exclusionary arrangements and threats, and other anticompetitive policies and practices with retailers, distributors and suppliers, Dorman sought to deprive them of the freedom to make competitive choices about which products should be offered to their end user customers, the ability to determine for themselves the products they sell, and the ability to diversify their products to best serve end user consumers' needs. By doing so, Dorman effectively foreclosed competing products from the FDO Market, and destroyed Needa's good faith attempts to compete fairly in the market.

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1 Needa settled its claims against O'Reilly prior to trial.

28. In addition, following the forced fire-sale sale of Needa's assets as a result of Dorman's anticompetitive conduct, Koleszar went to work for H. Paulin as general manager of the what is referred to as the Needa Division. At the end of 2012, Hillman Group, a Cincinnati-based hardware distributor/manufacturer, purchased H. Paulin. And Koleszar is now the national account manager for Hillman's "Needa" business, which focuses on its DIY product line.

29. Upon information and belief, Dorman has engaged in the same predatory conduct against Hillman that it did against Needa. In particular, it continues to force retailers to buy Dorman's full product line to the exclusion of other vendors such as Hillman's Needa. In at least two cases, Hillman believed that it had a large sale locked-up only to learn that Dorman was able to maintain its position through the same types of threats that it had made to Needa's customers and vendors. As a result, Hillman/Needa has lost significant business to Dorman, and has fought back to gain a foothold in the fastener product line, but not on the larger HELP product line.

30. As a result of the foregoing, retailers, distributors and suppliers have accepted Dormans's demands and restrictions, and agreed to refrain from purchasing and/or offering Needa's products in exchange for the right to continue to offer Dorman's products, to receive pricing discounts on Dorman's products and/or to avoid being penalized by Dorman by termination of their relationships with Dorman and withdrawal of their access to Dorman's products.

31. Dorman's anticompetitive practices, as alleged above, have unreasonably restrained, and, unless enjoined by this Court, will continue to unreasonably restrain, competition in the FDO Market. Dorman's practices threaten to artificially increase its share of the FDO Market and "tip" it permanently to Dorman because of its illegal exercise of monopoly power.

32. There are no business justifications for Dorman's practices. Dorman's exclusionary arrangements and threats with Needa's customers and suppliers in the FDO Market achieve no benefits, economic or otherwise, that outweigh the harm they have caused to Needa, and continue to cause to competition from other new entrants into the FDO Market. Dorman's concerted attempts successfully precluded Needa from access to third party suppliers also served no legitimate purpose other than to destroy Needa as a viable business competitor in the FDO Market.

33. Neither the antitrust laws nor this action seeks to inhibit Dorman from competing on the merits with any competitor. Rather, this Complaint only challenges Dorman's concerted attempts to acquire, maintain and/or expand its monopoly in the FDO Market through exclusionary arrangements with retailers, distributors and suppliers, and other anticompetitive conduct, that deter, exclude and/or eliminate competition, and rob end user customers of their right to choose among competing FDO Parts in the FDO Market.

34. The purpose and effect of Dorman's misconduct with respect to the FDO Market have been to eliminate Needa as a competitor and to preclude or lessen competition on the merits with respect to the sale of FDO Parts. And if such misconduct is not restrained by this Court, Dorman will acquire, maintain and/or expand its market share and monopoly power in the FDO Market, and other competitors and potential competitors will be precluded from successful entry into the FDO Market.

VI. CLAIMS FOR RELIEF

COUNT I
(Unlawful Exclusionary Agreements in Violation of Section 1 of the Sherman Act)

35. Plaintiffs incorporate the allegations of paragraphs 1 through 35 above as if expressly re-alleged herein.

36. Dorman's exclusionary arrangements with retailers, distributors and suppliers pursuant to which they agreed, were incentivized or threatened, and thereby coerced by Dorman, not to purchase and/or offer Needa's FDO Parts others' competing products, or to do so only on terms that materially disadvantaged such products, unreasonably restricted competition. These arrangements unreasonably restrained trade and restrict access to essential channels of distribution, thereby restraining competition in the FDO Market and driving Needa out of business.

37. The purpose and effect of these arrangements was to restrain trade and competition in the FDO Market. These agreements thus constitute contracts, combinations and/or conspiracies in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

COUNT II
(Monopolization of The FDO Market in Violation of Section 2 of the Sherman Act)

38. Plaintiff incorporates the allegations in paragraphs 1 through 37 above as if expressly re-alleged herein.

39. On information and belief, Dorman possesses monopoly power in the FDO Market. □

40. Through the anticompetitive, unfair and deceptive conduct described herein, Dorman has willfully achieved and maintained, and unless restrained by the Court, will continue to willfully maintain and expand, that monopoly power.

41. Dorman has acted with an intent illegally to maintain its monopoly power in the the FDO Market, and its illegal conduct has enabled it to do so, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, including the use of such monopoly power to destroy Needa's business.

COUNT III
(Attempted Monopolization of The FDO Market in Violation of Section 2 of the Sherman Act)

42. Plaintiffs incorporate the allegations of Paragraphs 1 through 41 above as if expressly realleged herein.

43. Dorman has willfully engaged, and is engaging, in a course of conduct, including a pattern and practice of seeking unreasonable exclusionary arrangements with retailers, distributors and suppliers in the FDO Market, as alleged above, in an attempt to monopolize the FDO Market.

44. Dorman has acted with a specific intent to monopolize, and to destroy effective competition in, the FDO Market (as it has already done so with respect to Needa).

45. There is a dangerous probability that, unless restrained by this Court, Dorman will succeed in acquiring, maintaining and/or expanding its monopoly power in the FDO Market, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

COUNT IV
(Fraud)

46. Plaintiffs incorporate the allegations of Paragraphs 1 through 45 above as if expressly re-alleged herein.

47. In an intentional, malicious and fraudulent scheme to cheat and defraud Koleszar, Dorman made misrepresentations and omissions of material facts in connection with the severance agreement he entered into near the time his employment with Dorman ended in 1998. In particular, in exchange for valuable consideration, Koleszar agreed to refrain from competing with Dorman for a period of 18-months following the end of his employment by Dorman. In other words, Koleszar was told by Dorman that following such 18-month period, he would have

the unfettered right to use his knowledge, experience, expertise and business acumen pertaining to the automobile parts aftermarket to fairly compete against Dorman.

48. In truth, at the time Dorman induced Koleszar to agree to the non-compete provision, among other things, it had no intention of fulfilling its promise to allow him to compete with Dorman, and purposely concealed their true intentions to engage in anticompetitive and predatory conduct to unreasonably delay and prevent Koleszar from competing with Dorman.

49. Koleszar, to his substantial detriment, reasonably relied on the terms in the severance agreement, believing, among other things, that the only restraints on his ability to compete against Dorman were the legal ones to which he agreed, i.e., his promise not to compete for a period of 18-months (and which complied with).

50. Because Dorman fraudulently intended for Koleszar to detrimentally rely on its intentional misrepresentations and omissions that he could fairly compete with Dorman after 18-months, and because Koleszar did detrimentally rely upon Dorman's intentional misrepresentations and omissions and refrained from competing with Dorman for the required 18-month period, and because Dorman concealed its true intentions from Koleszar, he is entitled to damages and punitive damages in an amount to be determined at trial.

VII. PRAYERS FOR RELIEF

WHEREFORE, PLAINTIFF PRAYS FOR RELIEF AS FOLLOWS:

1. That the Court enter a judgment finding that:

A. Dorman's conduct in requiring and/or inducing retailers, distributor and suppliers to not purchase, or not to offer and resell Needa's and other competitors' products as a condition of being able to offer and resell Dorman's products violates Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2;

B. Dorman's arrangements to provide with retailers, distributors and suppliers substantial discounts in pricing of Dorman products on the condition that such retailers of distributors not resell or offer Needa's and other competitors' products violate Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2;

C. Dorman's arrangements with suppliers whereby they either refrained from selling FDO Parts to Needa or charged Needa significantly higher prices or risked losing Dorman as a customer violate Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2.

D. Dorman's arrangements with retailers to purchase Needa's inventory to knock-out its position in stores violate Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2.

E. Dorman has attempted to monopolize the FDO Market as defined herein in violation of Section 2 of the Sherman Act, 15 U.S.C. §2,.

F. Dorman has willfully maintained its monopoly in the FDO Market as defined herein in violation of Section 2 of the Sherman Act.

G. Dorman fraudulently induced Koleszar to execute a severance agreement which required him to refrain from competing with Dorman for a period of 18 months.

2. That the judgment entered by the Court order that Dorman, its officers, directors, employees, agents and attorneys, and all persons acting on its behalf or under its direction or control, and all successors thereto, be preliminarily and permanently enjoined from:

A. Requiring or inducing any retailer, distributor, supplier or other person or entity, as a condition to be able to offer, or continue to offer, Dorman products to refrain from offer any other competitors' products;

B. Taking or threatening any action adverse to any retailer, distributor, supplier or other person or entity in whole or in part as a direct or indirect consequence of such retailer's, distributor's or supplier's offering of any other competitors' products;

C. Requiring maintaining or continuing any anticompetitive arrangements with any retailer, distributor, supplier calculated to preclude such retailer, distributor, supplier from carrying any other competitors' products; and

D. Making any literally and/or implicitly false and misleading statements to dealers, end user customers or others in the industry regarding Needa, any of Needa's products.

3. That the judgment entered by the Court also order that:

A. Dorman pay Needa damages in an amount to be determined at trial to compensate Needa for the injury caused by Dorman's unlawful acts and practices alleged above;

B. Needa's damages be trebled pursuant to the Federal antitrust laws.

C. Dorman pay Needa punitive damages in an amount to be determined at trial for Dormans's unlawful and malicious conduct, which was intended to harm Needa in the conduct of its business;

D. Dorman pay Koleszar damages and punitive damages in an amount to be determined at trial because Doorman's fraudulent and maliciously induced him to execute a severance agreement that contained a 18-month non-compete provision, therey unreasonably delaying Koleszar's entrance into the FDO Market.

E. Dorman pay Plaintiffs' attorneys' fees and costs incurred in connection with this action; and

F. Plaintiffs have such other and further relief as the Court deems just and □proper.

□

JURY DEMAND □

Plaintiffs demand a trial by jury of all claims in this action so triable.

Respectfully submitted,

By:____________________
Brent Cartwright (P73985)
1114 Long Lake Dr.
Brighton Michigan 48114
Attorneys for Plaintiffs

Dated: May 12, 2017

26/63

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

County in which action arose: Wayne County, MI

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

JIM KOLESZAR & NEEDA PARTS MANUFACTURING, INC.

(b) County of Residence of First Listed Plaintiff: Livingston County, MI

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Brent Cartwright, Esq., 1114 Long Lake Dr., Brighton Michigan 48114

DEFENDANTS

DORMAN PRODUCTS, INC.

County of Residence of First Listed Defendant: Montgomery County, PA

NOT

Att

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Case:5:17-cv-11523
Judge: Levy, Judith E.
MJ: Davis, Stephanie Dawkins
Filed: 05-12-2017 At 11:43 AM
CMP JIM KOLESZAR, ET AL V DORMAN PRODUCTS, INC (LG)

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for:

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☒ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
Sherman Act

Brief description of cause:
predatory conduct, monopolization, etc.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $ TBD (trebel damages)

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE
May 12, 2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: ______________________________

Case No.: ______________________________

Judge: ______________________________

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: ______________________________

Case No.: ______________________________

Judge: ______________________________

Notes :

New Lawsuit Check List

Instructions: Put a check mark in the box next to each appropriate entry to be sure you have all the required documents.

☑ Two (2) completed **Civil Cover Sheets.**

☑ Enter the number of defendants named in your lawsuit in the blank below, add 2 and then enter the total in the blank.

1 + 2 = 3 **Complaints.**
# of Defendants / Total

Received by Clerk: [signature] Addresses are complete: ______

Case:5:17-cv-11523
Judge: Levy, Judith E.
MJ: Davis, Stephanie Dawkins
Filed: 05-12-2017 At 11:43 AM
CMP JIM KOLESZAR, ET AL V DORMAN PRODUCTS, INC (LG)

☐ If any of your defendants are **government agencies:**
Provide two (2) extra copies of the **complaint** for the U.S. Attorney and the Attorney General.

If Paying The Filing Fee:

☑ Current new civil action filing fee is attached.

Fees may be paid by check or money order made out to:

Clerk, U.S. District Court

Received by Clerk: [signature] Receipt #: 103770

If Asking That The Filing Fee Be Waived:

☐ Two (2) completed **Application to Proceed in District Court without Prepaying Fees or Costs** forms.

Received by Clerk: ______

Select the Method of Service you will employ to notify your defendants:

Service via Summons by Self

☑ Two (2) completed **summonses** for each defendant including each defendant's name and address.

Received by Clerk: [signature]

Service by U.S. Marshal
(Only available if fee is waived)

☐ Two (2) completed **USM – 285 Forms** per defendant, if you are requesting the U.S. Marshal conduct service of your complaint.

☐ Two (2) completed **Request for Service by U.S. Marshal** form.

Received by Clerk: ______

Service via Waiver of Summons
(U.S. Government cannot be a defendant)

☐ You need not submit any forms regarding the Waiver of Summons to the Clerk.

Once your case has been filed, or the Application to Proceed without Prepaying Fees and Costs has been granted, you will need:

- One (1) **Notice of a Lawsuit and Request to Waive Service of a Summons** form per defendant.
- Two (2) **Waiver of the Service of Summons** forms per defendant.

Send these forms along with your filed complaint and a self-addressed stamped envelope to each of your defendants.

Clerk's Office Use Only

Note any deficiencies here: